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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG, et al., Defendants.	CASE NO. 157 680 [CONSOLIDATED] CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION; REQUEST FOR SANCTIONS AGAINST ARMSTRONG AND HIS ATTORNEY, FORD GREENE DATE: Dec. 1, 1995 TIME: 9:00 a.m. DEPT: 1 JUDGE: Hon. Gary W. Thomas TRIAL DATE: Vacated

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I. INTRODUCTION

Code of Civil Procedure Section 1008 permits a party to bring a motion for reconsideration only on the basis of "new or different facts, circumstances or law." No new facts, circumstances or law form the basis for defendant Gerald Armstrong's motion herein. Rather, Armstrong's attorney candidly admits that he has brought this motion in a fit of pique "because the Court cut me off and prevent me (sic) from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous." [Ex. A to Declaration of Laurie J. Bartilson, Declaration of Ford Greene dated November 2, 1995][1]

There is absolutely nothing presented in the rambling and vitriolic "amended" motion for reconsideration which is both new and relevant. Rather, Armstrong and his attorney merely re-argue the same issues, based on the same "evidence" which they argued before. As "new law," for example, they cite an interim summary adjudication ruling by a New York district court in an unrelated libel case. Not only has the case no precedential value, it decides absolutely nothing relevant to this Court's Order of Permanent Injunction dated October 17, 1995 ("Order of Permanent Injunction").

As a "new fact," they point to Armstrong's obligation to litigate the bankruptcy action which he filed. However, the adversary complaint in that action has been pending since July 11, 1995 [Ex. B to Bartilson Dec.]. On August 29, 1995 it was set for trial. [Bartilson Dec., ¶ 8.] Any commensurate obligation to produce evidence in that case was well known to Armstrong at the time that the original summary adjudication was argued, and cannot now be called "new."

Moreover, as demonstrated below, Armstrong has no need to discuss Scientology with

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[1] Plaintiff attaches Mr. Greene's original declaration as an exhibit because of the unusual manner in which Armstrong and his counsel have made this motion. In an apparent effort to comply with Section 1008's requirement that a reconsideration motion be made within 10 days after service of written notice of entry of an order, Mr. Greene filed a motion for reconsideration on November 2, 1995, and set it for hearing on December 1, 1995. Thereafter, on November 16, 1995, he filed an "amended," motion which contains additional argument and exhibits, in contravention of Section 1008. Plaintiff is therefore uncertain whether Mr. Greene's initial sworn statement will be before the Court, and has therefore attached it again to its evidence.

anyone in order to litigate that action. The issues which it presents concern Armstrong's dissipation of assets following his settlement with the Church, not his Church-related activities. The bankruptcy court has made it crystal clear to Armstrong that it has no intention of permitting him to re-litigate in that forum matters which have already been litigated here.

With no new facts or law presented, this court is without jurisdiction to hear Armstrong's motion. Nor is the substance of Armstrong's argument concerning the injunction itself strengthened by repetition here. Armstrong fills at least 4 pages with quotations, taken out of context, from old opinions which criticize the Church or other Scientology entities. The record of the summary adjudication motion is replete with such references; indeed, the record of this entire case demonstrates that Armstrong's main effort has been to convince the Court that the Church is "bad," and should lose for that reason alone. He devotes 2 pages to a rambling argument, previously rejected by this Court and by the Honorable David Horowitz in Los Angeles, that the Court should add a clause to the contract at issue herein, determine that the Church breached that (non-existent) clause, and then excuse Armstrong's breaches for that reason. No new evidence or law is offered here. He spends 6 pages re-arguing his contention that an injunction violates the his First Amendment rights. So far, three trial judges and the Court of Appeal have rejected this argument. Armstrong adds nothing new, but simply asserts for page after page that it violates his religious beliefs to be enjoined.

Armstrong's motion for reconsideration must be denied. Armstrong and his counsel should also be sanctioned for bringing the motion simply because they "believe that this Court's order is, in fact, erroneous." This is a blatant abuse of C.C.P. §1008, and yet another effort to unduly prolong these proceedings. Moreover, none of the substantive arguments made justify reversal or modification of the Order of Permanent Injunction.

II. STATEMENT OF FACTS

Armstrong has selectively omitted many pertinent facts from his motion for reconsideration. For example, the history behind the Order of Permanent Injunction is

revelatory of Armstrong's bad faith in bringing this motion for reconsideration, solely for purposes of delay:

On March 2, 1993, plaintiff Church of Scientology International filed its first motion for summary adjudication of its claim for permanent injunction. Armstrong did not respond to that motion; instead he sought and obtained a 14 - month stay of the proceedings while he appealed the trial court's Order of Preliminary Injunction. That Order was upheld on appeal on May 16, 1994 Dec., ¶2; Exhibits C & D thereto]

On February 23, 1995, plaintiff filed its amended motion for summary adjudication of its claim for permanent injunction. It was originally set for hearing on March 31, 1995. [Ex. E to Bartilson Dec.] Armstrong filed no fewer than 3 applications to continue the hearing on the motion to allow himself more time to respond. He even fired his attorney, Mr. Greene, so as to present to the Court additional reasons why he should be permitted to continue the hearing. [Bartilson Dec., ¶3.] Finally, he did file opposing papers -- late -- on April 7, 1995. [Id.]

The day before the Court was set to rule on the motion, however, Armstrong filed a petition for bankruptcy, staying the proceedings, and forcing the Church to obtain relief from stay in order to get a hearing on the pending motion. [Id.]

The motion was re-set for hearing on September 27, 1995. Greene, returning to the case on Armstrong's behalf, was permitted to file voluminous additional opposing papers on September 15, 1995. In addition, Armstrong himself filed further "evidence" in opposition to the motion on September 20, 1995. [Id.] The Church's application to present additional evidence of Armstrong's most recent breaches of the Agreement, however, was denied. [Id., ¶5]

Finally, on October 6, 1995, this Court heard extensive oral argument, and granted plaintiff's motion. Greene refused to conclude his remarks, continually interrupting the Court in his efforts to continue argument. [Ex. A to Greene's Second Declaration, p. 14-16.]

Plaintiff's counsel prepared a proposed Order that very day in accord with the Court's ruling. [Bartilson Dec., ¶6.] However, Greene refused to review the proposed order, and

made no effort to object to it in any way. [Id., ¶6.] Finally, plaintiff's counsel sent the proposed Order to the Court. The Court, after careful review, and requiring several revisions, entered the Order on October 17, 1995. [Id., ¶7.]

III. ARGUMENT

A. Armstrong Is Not Entitled To Reconsideration Of the Permanent Injunction Order

Code of Civil Procedure Section 1008 "governs reconsideration of court orders whether initiated by a party or the court itself. 'It is the exclusive means for modifying, amending or revoking an order. That limitation is expressly jurisdictional.'" Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1499 38 Cal.Rptr.2d 626, quoting, Morite of California v. Superior Court (1993) 19 Cal.App.4th 485, 590, 23 Cal.Rptr.2d 666. Moreover, "[a]ccording to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.'" Gilberd. at 1500. If a party does not provide the Court with new or different facts that are relevant to the merits of the dispute, the Court lacks jurisdiction to entertain the motion. Gilberd, supra, at 1500; accord, Peltier v. McCloud River Railroad Co. (1995) 34 Cal.App.4th 1809, 41 Cal.Rptr.2d 182, 184. Indeed, the First District Court of Appeal recently held that when a party brings a motion for reconsideration which is not based on relevant new or different facts, the resulting order denying reconsideration is not appealable. Alioto Fish Co., Ltd. v. Alioto (1994) 27 Cal.App.4th 1669, 1679-1680, 34 Cal.Rptr.2d 244.

In Gilberd, the trial court granted defendant's motion for reconsideration of various orders permitting the plaintiff to file an amended complaint, and dismissed plaintiff's action. On appeal, the defendant argued that the reconsideration motion was proper because the trial court "misinterpreted California law in its initial decision," and because the trial court had failed to hear oral argument in making that initial decision. The First District Court of Appeal finding "both of [defendant]'s contentions meritless," stated,

> [Defendant]'s first contention is utterly specious. What [defendant] essentially argues is that section 1008 does not apply when the litigant disagrees with the trial court's ruling. Since in almost all instances, the losing

> party will believe that the trial court's "different" interpretation of the law or facts was erroneous, to interpret the statute as the [defendant] urges would be contrary to the clear legislative intent to restrict motions to reconsider to circumstances where a party offers the court some fact or authority that was not previously considered by it.
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> Second, we cannot accept [defendant]'s implicit interpretation of section 1008 that a "new" or "different" fact or circumstance wholly collateral to the merits of the initial motion is sufficient to warrant reconsideration. While not denigrating the assistance that oral argument can provide to a court, the fact that [defendant] intended to request that the court entertain oral argument with respect to the initial motions is clearly collateral to the merits of the motions.

32 Cal.App.4th at 1500. The Court of Appeal vacated the second set of orders entered by the trial court, finding that it had acted in excess of its jurisdiction in granting reconsideration.

Gilberd is particularly instructive here, where Armstrong's attorney states that his rationale for seeking reconsideration is "because the Court cut me off [in oral argument] and prevent me (sic) from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous." [Greene Dec., ¶3 (sic-7)] It is plain that Armstrong's "new facts or law" are no different from those of the Gilberd defendant: they arise solely from Armstrong's opinion that the court erred in its initial ruling.

Indeed, Armstrong raises no new arguments in the briefing that he provides to this Court in support of reconsideration, but simply expounds on the same arguments that he offered to the Court in October. Whether or not Greene was permitted to argue at length in an oral presentation is, according to Gilberd, "wholly collateral" to the merits of the summary adjudication motion.[2]

In a transparent attempt to comply with the jurisdictional requirement that they provide the Court with new facts or law relevant to the dispute, Armstrong and Greene have, in their amended motion, cited to the following:

1. An interim order of a Colorado district court judge, issued on October 3, 1995, in a copyright infringement case which involves neither of the parties herein, and

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[2] Indeed, according to Gilberd, the result would have been the same if Mr. Greene had made no oral argument at all.

which deals with none of the issues relevant to the summary adjudication motion;[3]

2. An interim order of a New York district court judge, issued on November 14, 1995, in a libel case between the Church and Time magazine, which also deals with none of the issues relevant to the summary adjudication motion;[4] and

3. An order of the Bankruptcy Court in Armstrong's bankruptcy action, issued on October 10, 1995, stating that trial testimony in the action will be taken by declaration and cross-examination.

None of these rulings, however, provide any basis for reconsideration of the Order of Permanent Injunction, because all consist of collateral facts not relevant to the issues actually before the Court. The actions of the New York and Colorado courts in dealing with libel and copyright cases, involving other parties and having nothing to do with Armstrong, are irrelevant. As for the bankruptcy action, Armstrong's concern that the injunction will affect his defense therein is both unfounded and not new. The adversary complaint in that action was filed on July 11, 1995, and the court set the case for trial on February 13, 1996. Armstrong thus knew well before the hearing on the permanent injunction that he would be required to gather and present evidence in that action, and had every opportunity to argue those concerns to this Court. That he chose not to do so does not make the existence of that case a "new fact" supporting reconsideration.

Moreover, Armstrong's contention that the injunction could improperly inhibit his defense in that action is meritless. The issues in the action are not defined by Armstrong's rambling "Answer," but by the adversary complaint [Ex. B]. As can be seen from a review

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[3]The only citation to this opinion which appears in Armstrong's memorandum is contained in footnote 7. The case is cited for the proposition -- which is neither new, novel nor relevant -- that the Scientology religion is a subject of public debate. It is both irrelevant and cumulative.

[4]Armstrong's attempt to cite to the Time case is even more remote. In footnote 8, p. 7, he argues that this opinion supports Armstrong's viewpoint that the Church is attempting to "perpetrate a massive fraud on the American Court and the American People." However, even a cursory review of the opinion reveals that the only issue which the New York court considered was whether or not the Church had produced enough evidence to meet the "actual malice" standard presented by a libel case. The case concerned no issues of "fraud;" indeed, even the falsity of the statements made by Time was not an issue considered by the Court.

of that document, the issues are clear and straightforward. They concern Armstrong's attempts to defraud his creditors by (1) failing to admit ownership of the Gerald Armstrong Corporation on his bankruptcy petition; (2) fraudulently conveying away his assets after the settlement; and (3) entering into the contract with the Church when he had no intention of honoring it. Armstrong's opinions, viewpoints, fears and religious fervor concerning Scientology are not relevant to any of those issues. The bankruptcy court has already indicated that it will not permit Armstrong to expand the trial in that action into a heresy trial, or to raise any of the issues therein that have already been decided in this forum. Armstrong thus has no need to discuss the matters covered by the injunction with anyone in order to gather evidence that is relevant to the bankruptcy case.

In short, none of the "new facts or law" presented by Armstrong in defense of his motion for reconsideration are relevant to the issues that this Court had to decide in granting plaintiff's request for summary adjudication. As matters "collateral to the merits of the motion[]," 32 Cal.App.4th at 630, they cannot provide jurisdictional support for a reconsideration motion. Lacking jurisdiction, this Court must deny Armstrong's motion.

B. The Court's Finding That There Was No "Mutuality" Clause In The Integrated Contract As A Matter Of Law Was And Is Correct

Even if the Court decides to permit Armstrong to move for reconsideration, Armstrong has, nonetheless, provided no factual or legal basis for this Court to change its prior ruling. In his motion, Armstrong asks the Court, as he has several times in the past, to add a term to the Settlement Agreement of December, 1986 ("the Agreement," Ex. F), a term which does not exist: an "obligation" on the part of the Church "to maintain . . . silence as to Armstrong." [Amended Memo at 2]

The Agreement, however, does not contain any provision which imposes such an obligation on the Church, but does contain two separate clauses whose clear import is to preclude any attempt to go beyond the four corners of the Agreement.

Paragraph 9, an integration clause, provides,

> This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be

> amended only by a written instrument executed by [Armstrong] and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

Paragraph 18B further provides that the parties have made no representations not contained in the Agreement, and did not rely on any representation or statement not contained in the Agreement. As this Court will recall from evidence presented in support of plaintiff's original moving papers, Armstrong consulted not one but three attorneys in relation to this Agreement, and signed it happily, on videotape, after confirming to his lawyer, the Church and the Church's lawyers that he understood it fully and agreed with it.

The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation. Western Medical Enterprises, Inc. v. Albers (1985) 166 Cal.App.3d 383, 389. Extrinsic evidence is admissible to interpret the instrument, but not to give it a meaning to which it is not readily susceptible, and it is the instrument itself that must be given effect. Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 865. "The rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein; evidence cannot be admitted to show intention independent of the instrument." Stevenson v. Oceanic Bank (1990) 223 Cal.App.3d 306, 316 272 Cal.Rptr. 757, quoting 1 Witkin, Summary of California Law, Contracts, §684, p. 617 (emphasis in original). Indeed, the parol evidence rule "generally prohibits introduction of any extrinsic evidence to vary or contradict the terms of an integrated written agreement." Gerlund v. Electronic Dispensers International (1987) 190 Cal.App.3d 263, 270. Testimony of intention which is contrary to a contract's express terms does not give meaning to the contract, but seeks to substitute a new meaning. Such evidence is therefore excluded. Id. at 273.

The federal cases cited by Armstrong are in full accord with these principles and, in fact, support this Court's ruling. In Barris Industries, Inc. v. Worldvision Enterprises, Inc. (1989) 875 F.2d 1446, quoted at length by Armstrong, Worldvision, the distributor of the

television program "The Newlywed Game," sought to obtain 30% of the royalties that were made payable by cable re-distributors by statute. However, the contract between Barris, the producer of the game show, and Worldvision, only provided that Worldvision would receive 30% of the royalties received "under License Agreement." Worldvision provided extrinsic evidence of Barris's conduct after the contract was signed concerning Barris's apparent early uncertainty as to whether or not Worldvision was entitled to some of the statutory fees pursuant to the contract.

The district court refused to consider the extrinsic evidence, finding that "[e]ven if the court were to consider parole evidence it would find the proffered parole evidence neither relevant nor admissible to prove any asserted interpretation to which the contract language is reasonably susceptible." 875 F.2d at 1450. When reviewing the district court's order of summary judgment in favor of Barris, the Ninth Circuit concurred, finding that "the compensation clause of the agreement is unambiguous and therefore dispositive." Id. at 1451.

So, here, the evidence offered by Armstrong in this motion (which is the same evidence that Armstrong offered in October, and the same evidence which he offered to Judge Horowitz in July 1994) is "neither relevant nor admissible to prove any asserted interpretation to which the contract language is reasonably susceptible." It consists of contradictory declarations of Armstrong himself, and a declaration of Lawrence Heller which emphatically does not support Armstrong's herculean efforts to re-write the contract nine years after he signed it. Neither create any ambiguity in the plain terms of paragraph 7(D) of the Agreement.[5]

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[5] In the Agreement, Exhibit F, Armstrong is referred to as the "Plaintiff." Paragraph 7(D) of the Agreement provides that "**Plaintiff agrees** never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above.

(continued...)

Armstrong's sworn statements on the subject are, as this Court accurately noted, a lesson in "double speak."[6] When Armstrong opposed the Church's motion for preliminary injunction in 1992, Armstrong argued vigorously that paragraph 7(D) was not enforceable by the Church against him because it was not mutual. In Armstrong's own words, "Paragraph 7D prohibited Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong." [Ex. G, p. 50:25-27]. In his deposition, Armstrong admitted that he knew the provisions of the Settlement Agreement

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[5](...continued)
Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge of information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. **Plaintiff** expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, files, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals or entities listed in Paragraph 1 above. **The attorneys for Plaintiff**, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either during the settlement conferences. **Plaintiff agrees** that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000.00 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff."

This paragraph plainly imposes no duty on the Church to do anything. Indeed, the language entirely concerns comment that Armstrong may not make about or concerning the Church and entities and individuals related to the Church. Nothing in the language used even remotely suggests that the this term was intended to be mutual in any way.

[6] "Double speak" is defined by the American Heritage College Dictionary, 3rd Edition, as "deliberately ambiguous or evasive language." This court used the term to describe Armstrong's insistence in a declaration, that his claimed "careful weighing of options" "reflect[ed] the duress [he] was under to sign" the Agreement. The Court apparently considered, quite logically, that the two circumstances are mutually exclusive: someone under "duress" would not have an opportunity to "carefully weigh" his options before signing a contract. As noted infra, no credibility determination occurs when a court assesses statements which a party has made contradicting himself. Armstrong's claimed "upset" with the Court [Mem. at 7, n. 8] is simply a result of his own inconsistencies.

prevented him from disclosing confidential information but that the Church was not subject to those provisions. Indeed, during his deposition, Armstrong expressed the extreme displeasure which he claimed to have felt with his own attorney when that attorney showed him the Agreement, which, as Armstrong read it, "says on its face they can continue to attack you with impunity, Mr. Armstrong." [Ex. H, p. 160:2-15]

The admissions of a party receive an unusual deference in summary judgement proceedings. FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 398. An admission is binding unless there is a credible explanation for the inconsistent positions taken by a party. Id.

Armstrong's later protestations that he thought all along that the confidentiality provision of paragraph 7(D) was mutual thus were correctly disregarded by the Court in ruling on summary judgment. It is well-established that "a party may not rely on contradictions in his own testimony to create a triable issue of fact." Thompson v. Williams (1989) 211 Cal.App.3d 566, 573-574.

The only evidence which Armstrong submitted to this Court on the subject, beyond his own contradictory statements, is a declaration of Lawrence Heller, one of plaintiff's attorneys, dated November, 1989. [Armstrong's Ex. 1(A)(D) to Opposition to Motion for Summary Judgment re: 20th Cause of Action.] Armstrong contends that this declaration supports his alleged "understanding" that the parties intended the confidentiality provisions of paragraph 7 to be mutual. In reality, the declaration of Mr. Heller states only that the parties all agreed not to disclose the contents of the Agreement or the underlying facts of the case being settled, and that this non-disclosure provision was "the one issue which was not debated by any of the parties or attorneys involved." [Heller Dec. ¶¶ 3 and 4] Mr. Heller's declaration does not contradict the written Agreement at all: the Agreement provides in paragraph 18(D) that, "The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety."

Nor does Mr. Heller's declaration contradict or create an ambiguity in paragraph 7(D), the paragraph which Armstrong wishes to rewrite. If Mr. Heller's declaration is to be believed, the truth is that none of the parties -- including Armstrong -- and nor of the attorneys -- including Armstrong's three lawyers -- debated the provision, but adopted it exactly as it reads.

In short, this Court, like the district court in Barris, considered the evidence presented by Armstrong, and correctly concluded that "the proffered parole evidence [was] neither relevant nor admissible to prove any asserted interpretation to which the contract language is reasonably susceptible." Barris, supra, 875 F.2d at 1450. Armstrong has offered no new evidence or law which could properly cause this Court to change that determination. Just as in Barris, the plaintiff was and is entitled to summary adjudication.

C. Armstrong's Additional Arguments Were Properly Rejected By This Court

None of Armstrong's additional re-arguments provide any basis to change the Court's order. Armstrong's First Amendment arguments were dispositively rejected by the Second District Court of Appeal in May 1994, and, on different occasions, by three superior court judges. Nothing has changed since then, other than the tenor of Armstrong's rhetoric, which has become, if anything, even more virulent in its characterizations of his former religion, and distinctly less charitable. This Court has told Armstrong repeatedly that religion is not an issue in this case. For Armstrong to once again attempt to place this Court in the center of a (self-conceived) religious dispute is unconscionable.

Plaintiff declines to make this courtroom a battlefield on which competing religious theories are the casualties. Nothing in the Injunction prevents Armstrong from believing what he will, talking to God daily, or hating the Church vehemently.[7] All it prevents him from doing is that which he agreed to refrain from doing: giving voice to his hate. The

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[7] Armstrong's labeling of his vicious sentiments as "Christianist" is both puzzling and, on its face, contrary to traditional Christian doctrines ("But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also." [Matthew 5:39, Holy Bible, King James Version, p. 857]) However, the injunction does not effect Armstrong's beliefs at all; the prohibition is on speech, and it is based on his own contractual agreement.

Injunction is not a religious document, nor need the Court consult any religious scripture, runes or entrails in order to enforce it. It arises out of a legal contract, conceived of by lawyers, intended to end a garden variety dispute. Armstrong is bound by it regardless of his religious beliefs, then or now.[8]

Armstrong's remaining arguments are equally repetitious and unavailing. The Injunction does nothing more than enforce the Agreement which Armstrong made in 1986. Armstrong has been prevented since 1986 from acquiring documents concerning Scientology, talking to people about Scientology or working on anti-Scientology cases. The Agreement in this regard is clear, concise and unequivocal. That Greene chose to hire Armstrong to work on anti-Scientology cases in the face of the Agreement, of which he had full notice, and chose to have Armstrong amass his anti-Scientology library is not this Court's problem. It is a situation created entirely by Armstrong's own wrong-doing, encouraged and aided by Greene. Since at least 1992, Greene has been on notice of plaintiff's rights under the Agreement, and of plaintiff's intention to fully enforce those rights.[9]

As for Armstrong's professed dilemma that the documents from this action are now publicly available, but not to him, the Church would be happy to stipulate to the sealing of this Court's records. Indeed, sealing these records would be consistent with the terms and conditions of the Agreement (which sealed the records of the underlying case, from which Armstrong quotes so heavily in his memorandum). The sealing of the records of the underlying case by the Agreement was upheld by the Second District Court of Appeal in the very decision which Armstrong cites, Church of Scientology of California v. Armstrong

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[8] Armstrong's argument that to be "sued, enjoined, and jailed" because of the Agreement violates his religious beliefs is equally specious. It might behoove Armstrong and Greene to take heed of Matthew 5:25: "Agree with thine adversary quickly, whiles thou are in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison." [Holy Bible, supra, at 856]

[9] Armstrong's "restraint of trade" argument was first made before Judge Sohigian, and rightfully rejected. Nothing prevents Armstrong from engaging in any profession -- paralegal, secretary, author, artist, "runner against trash," or whatever he desires. The limitations that he not work on anti-Scientology cases, and that he not discuss Scientology, do not prevent him from working in those professions or any others.

(1991), 232 Cal.App.3d 1068-1070. In the words of the Court of Appeal, "the parties had the right to rely on the sealing order." Id. at 1070. Just because Armstrong has chosen to violate the sealing order, along with his other wholesale violations of the Agreement, is no reason for this Court to legitimize those breaches. However, even absent an order sealing the records of this Court, the fact remains that the world has not agreed to relinquish possession of the documents in question, but Armstrong has. His files, and those amassed by his attorney[10] in connection with this case, must be returned to the Church.[11]

D. Armstrong And His Counsel Should Be Sanctioned For Bringing This Motion In Contravention Of The Code And In Bad Faith

Code of Civil Procedure Section 1008 (d) provides that a violation of Section 1008 "may be punished as a contempt and with sanctions as allowed by Section 128.5." Courts have not hesitated to sanction parties and their lawyers who attempt to relitigate decided issues, e.g., Taylor v. Varga (1995), ___ Cal.App.4th ___, 43 Cal.Rptr.2d 904, 911. In Taylor, the defendant moved for relief from default. After that motion was denied, the defendant brought a second motion to set aside the default, basing the second motion on a different code provision. The trial court denied the second motion and imposed sanctions against the defendant and defendant's counsel in the amount of $2,100. In upholding the sanctions order, the Court of Appeal stated,

> The duplicative nature of the request was sufficient to justify the sanctions imposed. Neither the court, litigants, nor opposing counsel should be subject to such sequential efforts to challenge rulings. This type of duplicative proceeding is not to be encouraged. Sanctions were properly imposed.

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[10] Greene's arguments that he, as Armstrong's counsel, should not be bound by the Injunction, or that the Injunction will restrict his legal practice, are specious. If Greene amassed files jointly for Armstrong and other clients, he did so in violation of the preliminary injunction which has been in place since May, 1992. So long as Greene is acting as Armstrong's agent, with full knowledge of the Agreement, the Preliminary Injunction, and the Permanent Injunction, he is responsible for compliance in all respects.

[11] Armstrong is apparently relying on the filing of this motion for reconsideration as his excuse from not complying with the Order of Injunction. Pursuant to that Order, Armstrong was to return all documents to the Church within twenty days of the Order. Despite demand [Ex. I], Armstrong and Greene have not returned a single document.

43 Cal.Rptr.2d at 911.

So, here, Armstrong and his counsel should be sanctioned for the "duplicative nature" of this motion. The Court is not required to entertain duplicative requests such as this one, nor is Armstrong entitled to a second determination of plaintiff's summary adjudication motion. After all, that motion was fully and thoroughly briefed, over a months-long period, at Armstrong's request. "Because the Court cut me off and prevent me (sic) from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous," [Greene Dec., supra] are insufficient reasons to destroy the time of all concerned with a duplicative motion. Plaintiff accordingly requests that Armstrong and his counsel, Ford Greene, be sanctioned in the amount of $1,600, to be raised to $2,400 if plaintiff's counsel is required to appear for an oral argument on this motion [Declaration of Laurie J. Bartilson, ¶10]. The Church also requests that Armstrong and Greene be ordered to comply with the portion of the Order of Permanent Injunction requiring them to return documents to plaintiff forthwith, and that a consecutive fine be imposed for every day on which they choose to remain in non-compliance.

IV. CONCLUSION

Armstrong has raised no new or different facts in support of his motion for reconsideration. Consequently, this court lacks jurisdiction to make the order which he requests. Moreover, all of the arguments which Armstrong makes in support of his motion lack merit. It would appear that this motion has been filed for purposes of delay, to augment an already bloated record, and to avoid compliance with the Court's clear order. Under these circumstances, plaintiff requests that the Court: (1) deny the motion for reconsideration; (2) award plaintiff sanctions against both Armstrong and Greene in the amount of $1,600, to be increased to $2,400 if plaintiff is required to appear to respond to oral argument; and (3) order Armstrong and Greene to comply with the paragraph 1, page 7

of the Order of Permanent Injunction forthwith, or pay to the Court a fine of $200 per day for every day on which they choose to remain in non-compliance.

Dated: November 22, 1995

Respectfully submitted,

MOXON & BARTILSON

By: Laurie J. Bartilson
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevar, Suite 2000, Hollywood, CA 90028.

On November 21, 1995 I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION; REQUEST FOR SANCTIONS AGAINST ARMSTRONG AND HIS ATTORNEY, FORD GREENE on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on November 21, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such -- envelopes by hand to the offices of the addressees.

Executed on _____, at _____, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On November 22, 1995, I caused the attached copy of **CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION; REQUEST FOR SANCTIONS AGAINST ARMSTRONG AND HIS ATTORNEY, FORD GREENE** on the following in said cause, by placing for deposit with Lightning Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in a sealed envelope. The envelope was addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on November 22, 1995.

Colleen Y. Palmer

COLLEEN Y. PALMER

WILSON, RYAN & CAMPILONGO
115 Sansome Street, Suite 400
San Francisco, California 94104